



Ohio Administrative Code Rule 4906-2-21 Motions for protective orders.

Effective: December 11, 2015

(A) Upon motion of any party or person from whom discovery is sought, the board or the administrative law judge may issue any order which is necessary to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. Such a protective order may provide that:

- (1) Discovery not be had.
- (2) Discovery may be had only on specified terms and conditions.
- (3) Discovery may be had only by a method of discovery other than that selected by the party seeking discovery.
- (4) Certain matters not be inquired into.
- (5) The scope of discovery be limited to certain matters.
- (6) Discovery be conducted with no one present except persons designated by the board or the administrative law judge.
- (7) A trade secret or other confidential research, development, commercial, or other information not be disclosed or be disclosed only in a designated way.
- (8) Information acquired through discovery be used only for purposes of the pending proceeding, or that such information be disclosed only to designated persons or classes of persons.

(B) No motion for a protective order shall be filed under this rule until the person or party seeking the order has exhausted all other reasonable means of resolving any differences with the party seeking discovery. A motion for a protective order shall be accompanied by:



(1) A memorandum in support, setting forth the specific basis of the motion and citations to any authorities relied upon.

(2) Copies of any specific discovery request which are the subject of the request for a protective order.

(3) An affidavit of counsel, or of the person seeking a protective order if such person is not represented by counsel, setting forth the efforts which have been made to resolve any differences with the party seeking discovery.

(C) If a request for a protective order is denied in whole or in part, the board or the administrative law judge may require that the party or person seeking the order provide or permit discovery on such terms and conditions as are just.

(D) Upon motion of any party or person filing a document with the board's docketing division relative to a case before the board, the board or the administrative law judge assigned to the case may issue any order which is necessary to protect the confidentiality of information contained in the document, to the extent that state or federal law prohibits release of the information, including where it is determined that both of the following criteria are met: The information is deemed by the board or administrative law judge assigned to the case to constitute a trade secret under Ohio law, and where non-disclosure of the information is not inconsistent with the purpose of Title 49 of the Revised Code. Any order issued under this paragraph shall minimize the amount of information protected from public disclosure. The following requirements apply to a motion filed under this paragraph.

(1) All documents submitted pursuant to this rule should be filed with only such information redacted as is essential to prevent disclosure of the allegedly confidential information. Such redacted documents should be filed with the otherwise required number of copies for inclusion in the public case file.

(2) Three unredacted copies of the allegedly confidential information shall be filed under seal, along with a motion for protection of the information, with the chief of the docketing division, or the



chief's designee. Each page of the allegedly confidential material filed under seal must be marked as "confidential," "proprietary", or "trade secret".

(3) The motion for protection of allegedly confidential information shall be accompanied by a memorandum in support setting forth the specific basis of the motion, including a detailed discussion of the need for protection from disclosure, and citations of any authorities relied upon. The motion and memorandum in support shall be made part of the public record of the proceeding.

(E) Pending a ruling on a motion filed in accordance with this rule, the information filed under seal will not be included in the public record of the proceeding or disclosed to the public until otherwise ordered or released pursuant to this rule. The board and its employees will undertake reasonable efforts to maintain the confidentiality of the information pending a ruling on the motion. A document or portion of a document filed with the docketing division that is marked "confidential", "proprietary", "trade secret", or with any other such marking, will not be afforded confidential treatment and protected from disclosure unless it is filed in accordance with this rule.

(F) Unless otherwise ordered, any order prohibiting public disclosure pursuant to this rule shall automatically expire twenty-four months after the date of its issuance, and such information may then be included in the public record of the proceeding. Exceptions may be made for motions seeking to protect critical energy infrastructure information. A party wishing to extend a protective order beyond twenty-four months shall file an appropriate motion at least forty-five days in advance of the expiration date of the existing order. The motion shall include a detailed discussion of the need for continued protection from disclosure.

(G) Nothing precludes the board from reexamining the need for protection issue de novo during the twenty-four month period if there is an application for rehearing on confidentiality or a public records request for the redacted information.